

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1299 OF 2013

Yeshwant Sheshraoji Deulkar,
Aged 49 years, Occupation – Nil,
R/o At Post – Seloo, Tah. Seloo, Dist. Wardha

Petitioner

Versus

1. Mahatma Fule Magaswargiya Kalyankari
Mandal, through its Secretary, Shri V.W. Ginne,
At Tulzapur, Railway, Tah – Seloo, Dist. Wardha
2. The Headmaster, Late Laxmanrao Mankar
(Guruji) Adiwasi Ashramschoool, Wadgaon
(Janali), Tah – Seloo Dist - Wardha
3. Project Officer, Integrated Tribal Development
Project, Adivasi Vikas Bhavan, Giripeth, Nagpur
4. The Presiding Officer, School Tribunal,
Chandrapur

Respondents

Mrs. S.W. Deshpande, Advocate for petitioner
Mr. Tejas Patil, Advocate for respondent Nos.1 and 2
Mr. H.D. Dubey, AGP for respondent Nos.3 and 4

CORAM : MANISH PITALE, J.

DATE : 21st APRIL, 2022

ORAL JUDGMENT

By this writ petition, the petitioner has challenged
judgment and order dated 13/12/2012, passed by the School

Tribunal, Chandrapur, whereby an appeal filed by the petitioner was dismissed.

2. It was the case of the petitioner that he was duly qualified and appointed in accordance with law as Assistant Teacher by the respondent No.1 and that his appointment was also approved. It was also claimed that on 01/07/2001, he was not allowed to work, thereby leading to otherwise termination of service. On the basis of such cause of action, the petitioner filed the aforesaid appeal before the School Tribunal.

3. As per the settled position of law, the Tribunal framed necessary issues for consideration, the most crucial being, as to whether appointment of petitioner was in terms of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'the MEPS Act') and Rules framed thereunder. On an analysis of the material available on record, the Tribunal came to a conclusion that the appointment of the petitioner could not be said to be in terms of Section 5 of the aforesaid Act. Having held against the petitioner on the said point the appeal itself was dismissed.

4. In the present writ petition, Rule was granted by order dated 30/09/2014. During pendency of the writ petition, replies and documents were filed on behalf of the respondents.

5. Mrs. S.W. Deshpande, learned counsel appearing for the petitioner submitted that a perusal of the documents filed along with reply filed on behalf of respondent No.3 would show that insofar as the qualifications were concerned, the petitioner was duly qualified because even as per the Commissioner for Tribal Development, as stated in the communication dated 01/03/2011, the qualification held by the petitioner of B.P.Ed. (Biofocal) was equivalent to B.Ed. and that, the Tribunal in the present case was not justified in holding that the petitioner was not duly qualified. It was submitted that such employees, who held qualification of B.P.Ed. (Biofocal) were granted relief in terms of Government Resolution dated 25/09/2006. On this basis, it was submitted that since the post was available with respondent No.2, this Court could consider granting relief to the petitioner.

6. On the other hand, Mr. Tejas Patil, learned counsel appearing for the respondent Nos.1 and 2 submitted that a perusal of the impugned judgment and order shows that apart from the question of qualifications, the Tribunal held against the petitioner for the reason that there was absence of material to show that he was appointed by following due process of issuance of advertisement and a proper selection process. Even on the question of qualification, it was submitted that since the petitioner claimed to have been duly appointed in the year 1988-89, the

communication issued much later by the concerned authority regarding equivalence of such qualification would be of no assistance to the petitioner. It was submitted that even the approval was granted to to the petitioner on temporary basis for one year. On this basis, it was submitted that the petition deserved to be dismissed.

7. This Court has considered the material on record. Perusal of the impugned judgment and order shows that the appointment of the petitioner has been held to be not in terms of Section 5 of the MEPS Act and Rules framed thereunder, on both counts, i.e. lack of appropriate qualifications and absence of material to demonstrate issuance of advertisement and proper procedure being followed before issuance of appointment order.

8. On the question of qualification, the learned counsel appearing for the petitioner has vehemently contended that when the service of the petitioner was otherwise terminated on 01/7/2001, necessary material had already come on record to indicate that the qualification held by the petitioner was equivalent to B.Ed. That, therefore, the findings rendered by the Tribunal was unsustainable.

9. In this regard, this Court has perused the material on record, which indicates that reliance is placed on behalf of the

petitioner on the Government Resolution dated 25/09/2006 and the communication dated 01/03/2011, issued by the Commissioner of Tribal Development. Even if the said communication and Government resolution were to be taken into consideration, they are admittedly issued much after the alleged otherwise termination of service of the petitioner. Even otherwise, the question of equivalence of qualification would have to be examined and determined by the appropriate authority and this Court would not venture into the said exercise, only on the basis of the aforesaid Government Resolution and communication.

10. But, in any case, the said aspect of the matter pales into insignificance, in view of the findings rendered by the Tribunal regarding the manner in which the petitioner was appointed. The petitioner had relied on two appointment orders, one dated 04/07/1998 and other dated 01/05/1999. The appointment order dated 04/07/1998, shows that it refers to the application of the same day and it is clearly stated that the appointment is temporary in nature. It is further fortified by the order dated 20/07/1999, issued by the respondent No.3, whereby approval was granted for appointment only for the period between 01/12/1998 to 30/04/1999. The aforesaid material does not indicate that the appointment order dated 04/07/1998, was preceded by an advertisement and proper process of selection.

11. Insofar as appointment order dated 01/05/1999 is concerned, the same also refers to an application of the very same date. An attempt was made on behalf of the petitioner to claim that it was referable to an advertisement placed on record. But, the Tribunal has correctly found that the appointment order dated 01/05/1999, could not be related to the said advertisement because under the said advertisement, the applications were to be received by 02/01/1999. But, the appointment order dated 01/05/1999, itself shows that it was based on an application dated 01/05/1999, submitted by the petitioner. This clearly indicates that the appointment order dated 01/05/1999, was also not in pursuance of advertisement and regular process of selection.

12. Therefore, the findings rendered by the Tribunal in the impugned judgment and order on the aspect of appointment of the petitioner not being in consonance with Section 5 of the MEPS Act and Rules framed thereunder, cannot be found fault with.

13. Once the said conclusion is reached, it becomes clear that no interference is warranted in the impugned judgment and order. Accordingly, the writ petition is dismissed.

Rule is discharged.

JUDGE

MP Deshpande